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IN THE

Supreme Court of the United States

October Term, 1978

No. 77-983

STATE OF WASHINGTON, *et al.*,
Petitioners,
v.
WASHINGTON STATE COMMERCIAL PASSENGER FISHING VESSEL ASSOCIATION AND WASHINGTON KELPERS ASSOCIATION,
Respondents.

No. 78-119

STATE OF WASHINGTON, *et al.*,
Petitioners,
v.
UNITED STATES OF AMERICA,
Respondent.

No. 78-139

PUGET SOUND GILLNETTERS ASSOCIATION, *et al.*,
Petitioners,
v.
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON,
Respondent.

MOTION FOR LEAVE TO FILE AND BRIEF OF *AMICI CURIAE*

American Friends Service Committee; Church Council of Greater Seattle; Washington Association of Churches; Office of Catholic Charities, Archdiocese of Seattle, Native American Task Force; Synod of Alaska Northwest, United Presbyterian Church; Board of Church and Society of the United Methodist Church; American Baptist Churches in the United States of America; Lutheran Council in the United States on behalf of the Lutheran Church in America; Office for Church and Society, United Church of Christ.

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MOTION FOR LEAVE TO FILE BRIEF OF *AMICI CURIAE*

This motion for leave to file the annexed brief *amici curiae* is respectfully made pursuant to Rule 42 of the Supreme Court Rules. Consent to the filing of this brief has been granted by counsel for the United States and liaison counsel for the Intervenor Indian Tribes. Counsel for the State of Washington also consented to the filing of this brief, conditioned upon counsel for these *amici* noting that he was formerly counsel of record for the Hoh Indian Tribe, but did not actively participate in the proceedings

below. Consent has been withheld by the Washington State Commercial Passenger Fishing Vessel Association, the Washington Kelpers Association, and the Puget Sound Gillnetters Association.

The *amici* have no political or economic interest in the issue before the Court. Our interest is in the moral implications of these proceedings. The case involves solemn promises made by the United States and various quasi-sovereign Indian nations. The obligations undertaken by the United States were assumed in exchange for the benefits the treaties gave to the United States and its people. The *amici* believe the arguments posed by the state and commercial fishing groups would in effect negate the benefits which the treaties conferred to and the rights reserved by the Indian tribes. *Amici* support the tribes' position before the Court, and respectfully request the Court's consideration of this analysis of the history and law affecting this issue.

The *amici* are familiar with the issues involved in this case. The American Friends Service Committee represents a social justice arm of the Religious Society of Friends. Its concern for the rights of Indian tribes derives from early Quaker principles of contract with tribes developed when establishing the colony of Pennsylvania. The American Friends Service Committee has maintained an active Indian Affairs Program in the Pacific Northwest for many years. Early in 1960 this program initiated an in-depth study of the history behind the fishing rights issue and the contemporary attitudes and forces affecting the on-going conflict. The results of that study became the book *Uncommon Controversy—Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians,* published by the University of Washington Press in 1970. The book, which went into its fourth printing in 1975, has served as a useful background resource and has been widely disseminated. The current AFSC program has produced a study of local law enforcement jurisdiction on reservations in Washington and serves as a resource for public education on contemporary Indian issues.

The Church Council of Greater Seattle is an ecumenical organization established in 1969 to provide a structure within which a number of denominations, local congregations, and church-related entities can make the determinations and decisions necessary to effective Christian witness and ministry in the Greater Seattle area. The Church Council identifies needs in the community which require church action and develops strategies to address these needs through existing church and community structures. The Council has had a Native American Concerns Task Force since 1973 which has reviewed the issues of conflict between Indian tribes and the state. Through the work of the task force, the Church Council has issued statements favoring Indian sovereignty and supporting the 1974 district court decision.

The Washington Association of Churches is an organization committed to dialogue and communication among its denominational membership. The Association has participated on the Church Council Native American Task Force and supports its positions.

These two ecumenical organizations represent the regional level of eighteen major Christian denominations. Two regional denominations have acted individually to join in the brief. They include the Native American Task Force, Office of Catholic Charities, Archdiocese of Seattle,

and the Synod of Alaska Northwest, United Presbyterian Church. In addition to this Pacific Northwest regional constituency, some denominations believe the matter before the Court is of such import that it warrants the voice of the national church organizations. For that reason the following national denominational voices have joined this brief: Lutheran Council in the United States of America on behalf of the Lutheran Church in America; the Board of Church and Society of the United Methodist Church; the American Baptist Churches in the United States of America; and the Office for Church and Society, United Church of Christ.

Too often the nation's relationship with Indian Tribes has been marred by self-seeking expediency, broken promises and unfulfilled obligations. The dominant society's efforts to "re-socialize" our Indian citizens has often failed to recognize the richness of their culture and the rightness of their lifestyle to their own value structure. The result has led to a denial of self-determination and to the disenfranchisement of our native people. All segments of our society have contributed to this unfortunate condition, including some of the past policies of the churches joining this brief. However, hopefully we are embarking on a new era in our relationship with the tribes—an era in which we underscore our obligation to our solemn contracts with them and value the contribution of their culture to our total society. It is in this spirit we approach the Court, and request that this motion to file the annexed brief *amici curiae* be granted.

Respectfully submitted,

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Attorney for *Amici Curiae*

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BRIEF OF *AMICI CURIAE*

INTEREST OF *AMICI*

The interest of *amici* is set forth in the preceding motion for leave to file this brief.

INTRODUCTION

Reinhold Niebuhr, the eminent American theologian, observed that:

> The most obvious rational check which can be placed upon the use of coercion is to submit it to the control

> of an impartial tribunal which will not be tempted to use it for selfish ends . . . the supposition is that the government is impartial with reference to any disputes arising between citizens, and will therefore be able to use its power for moral ends . . .[1]

The *amici* believe that the principle of an "impartial tribunal" is fundamental to the issue before this Court.

The State of Washington has a political and economic self-interest in the fishery resource and has allowed that self-interest to cloud the legitimate rights of Indian tribes to a fishery. The tribes are a small minority and have been vulnerable to the coercion of the state. They have been subjected to arrest, gear confiscation, harassment, and humiliation as they have struggled since shortly after the Treaties were ratified to have their fishery recognized and respected.

Illustrative of the disparate *political* power of these two contending groups is the fact that state court judges, who are elected for four- or six-year terms and fear the will of the majority, consistently hold against Indian treaty fishing rights whereas federal judges, who are appointed for life, consistently hold in favor of Indian treaty fishing rights—a situation reminiscent of the 1950's and 1960's when southern state court judges tended to deny civil rights of blacks, whereas federal court judges, although selected from the same pool of lawyers, insisted those rights be upheld.

The full implementation of the Indians' fishing rights, as recognized by the lower federal courts, will require adjustments within the current non-Indian fishery. However,

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1. R. Niebuhr, *Moral Man & Immoral Society* 238 (1932).

when addressing these adjustments, one cannot ignore the years of struggle Indians have faced because of past failure of the state to honor their rights.

SUMMARY OF ARGUMENT

The arguments of the *amici* can be summarized in the following six points:

1. The lower courts' interpretation of the 1855 Stevens Treaties is morally compelled and legally sound.
2. The Washington State Government has a long history of refusing to recognize Indian treaty fishing rights.
3. Hostile state reaction to the lower court decision has caused difficulties in implementation which would have been avoidable if the state had assumed a cooperative posture.
4. The responsibility for difficulties imposed on the non-Indian fishing industry should be shouldered by the state and federal governments which caused the problem, not by the Indians.
5. Implementation of *United States v. Washington* will benefit both the Indian and non-Indian citizens of the state.
6. The decision is consistent with current congressional policy of Indian self-determination.

ARGUMENT

I.

The Lower Courts' Interpretation of the 1855 Stevens Treaties is Morally Compelled and Legally Sound

The trial court, after a comprehensive review of the historical and legal evidence, rendered a decision which is legally sound and morally consistent with our nation's 1787 pledge in the Northwest Ordinance that:

> The utmost good faith shall always be observed toward the Indians; their land and property shall

> never be taken from them without their consent; and in their property, rights, and liberty, they never shall be invaded or disturbed unless in just and lawful wars, authorized by Congress; but laws founded in justice and humanity shall from time to time be made, for preventing wrongs being done to them, and for preserving peace and friendship with them. *Journal of the Continental Congress* 32:340-41.

The district court correctly recognized that "The treaty was not a grant of rights to the treating Indians, but a grant of rights from them, and a reservation of those not granted." *United States v. Washington*, 384 F. Supp. 312, 407 (W.D. Wash. 1974). *See United States v. Winans*, 198 U.S. 371, 381 (1905). In interpreting the language, "The right of taking fish, at all usual and accustomed grounds and stations, is further secured to said Indians, in common with all citizens of the territory . . .," the district court recognized the paramount importance to the tribes of the fishing rights reserved by them. In so doing, the court correctly interpreted the treaty language as it would have been reasonably understood by the tribe.[2]

Through the treaties, Indian tribes relinquished their claims to vast areas of land, timber, fishery and water resources. The district court noted that:

> To the great advantage of the people of the United States, not only in property but also in saving lives of citizens, and to expedite providing for what at the time were immediate and imperative national needs, Congress chose treaties rather than conquest as the means to acquire vast Indian lands.

United States v. Washington, 384 F. Supp. at 330. If these treaties have any value to the Indians, it is in the protection they offer for the few rights reserved by them. *To argue that the Indians reserved no special rights to the fishery, but only kept rights to fish exactly the same as other citizens of the territory, is untenable and unconscionable.* No specific language would have been necessary to secure such a wholly illusory right. Surely the Indians understood they were reserving something "special" in return for relinquishing virtually the entire Washington Territory.

The State of Washington has argued in the past that the Stevens Treaties recognize no special tribal rights to an off-reservation fishery. This argument was soundly rejected in *United States v. Winans*, wherein the Court noted:

> This is certainly an impotent outcome to negotiations and a convention which seemed to promise more, and give the word of the nation for more.

198 U.S. at 380.

Despite this ruling, the state continues to present the same argument. As in the past, the Court should reject it and reaffirm the moral and legal obligation assumed by the United States when the benefits of the treaties were accepted by this nation.

II.

The Washington State Government Has a Long History of Refusing to Recognize Indian Treaty Fishing Rights

In 1886 the Court observed in *United States v. Kagama*, 118 U.S. 375, 384, that:

> Because of the local ill feeling, the people of the States

2. These principles of interpretation applied by the lower courts are well established in case law and were applied to the Stevens Treaties in *United States v. Winans, supra* at 380:

> We have said we will construe a treaty with the Indians as "that unlettered people" understood it, and "as justice and reason demand, in all cases where power is exerted by the strong over those they owe care and protection," and counterpoise the inequality "by the superior justice which looks only to the substance of the right, without regard to technical rules." [*Choctaw Nation v. United States*] 119 U.S. 1 . . . [*Jones v. Meehan*] 175 U.S. 1 [1899] . . .

> where they are found are often their deadliest enemies. From their very weakness and helplessness, so largely due to the course of dealing of the federal government with them and the treaties in which it has been promised, there arises the duty of protection, and with it the power.

This prophetic statement describes the situation which has evolved in the State of Washington.

A. *State Court Actions Denying Indian Rights*

The Supreme Court of Washington has a long history of disregard for the basic validity of the treaties. The prevailing attitude was most blatantly stated in the 1916 case *State v. Towessnute*, 89 Wash. 478, 481-82, 154 P. 805, 807 (1916):

> The premise of Indian sovereignty we reject. The treaty is not to be interpreted in that light. At no time did our ancestors in getting title to this continent ever regard the aborigines as other than mere occupants, and incompetent occupants, of the soil. Any title that could be had from them was always disdained . . . Only that title was esteemed which came from white men. . . .
>
> The Indian was a child, and a dangerous child, of nature, to be both protected and restrained. In his nomadic life he was to be left, so long as civilization did not demand his region. When it did demand that region, he was to be allotted a more confined area with permanent subsistence. . . .
>
> These arrangements were but the announcement of our benevolence which, notwithstanding our frequent frailties, has been continuously displayed. Neither Rome nor sagacious Britain ever dealt more liberally with their subject races than we with these savage tribes, whom it was generally tempting and always easy to destroy and whom we have so often permitted to squander vast areas of fertile land before our eyes.

That such a decision could be rendered in 1916 by the highest court of the state in light of the 1905 ruling in *United States v. Winans* is an example of the hostility ingrained in the attitudes of state officials.[3]

In 1977, the State Supreme Court ignored the fact that the basic ruling of the federal district court had been unanimously upheld by the Ninth Circuit Court of Appeals and that this Court had denied *certiorari*. At a time when the district court was continuing to exercise jurisdiction over the subject matter of this dispute, the majority of the Washington Supreme Court in *Puget Sound Gillnetters v. Moos*, 88 Wash. 2d 677, 691 565 P.2d 1151, 1158 (1977), agreed on the remarkable statement:

> Being cited no authority for the proposition that federal district courts have exclusive jurisdiction to construe Indian treaties—treaties which affect important interests of the state— we adhere to our own interpretation of the treaty.[4]

The State Supreme Court then went on to deny the Indian rights so carefully considered and upheld in *United States v. Washington*.[5]

One ground relied upon by the State Supreme Court was

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3. The ruling in *State v. Towessnute* effectively prohibited Indians from fishing without state licenses until the ruling was overturned by *Tulee v. Washington*, 315 U.S. 681 (1942). The lone dissenting judge in Towessnute noted that he could not concur with the majority's reasoning that the Enabling Act of the state implicitly abrogated the treaty. Judge Holcomb observed that: "Whatever may be the views of the majority as to what an Indian treaty with our national government is, whether it is a treaty between two sovereigns or not, it is certainly a solemn compact binding in law and in honor upon both parties to it . . . Good faith requires the observance of the spirit as well as the letter of the compact with the Indians, more especially because the Indian tribe is the weaker of the two parties to the compact." 89 Wash. at 489, 154 P. at 809-10.

4. *See McConaughy, The Interaction of Federal Equitable Remedies with State Sovereignty*, 53 Wash. L. Rev. 787 (1978).

5. Two dissenting state judges correctly stated that the federal district court decision was final in the federal court system and binding on the state.

that the federal interpretation of the treaty denied equal protection to non-Indians under the Fourteenth Amendment to the Constitution. The argument is without validity. This Court has often upheld treaties that reserve or grant to an Indian *tribe* rights that are different than those accorded non-Indians or non-members of the tribe. The benefits of the treaties belong to those individuals who are members of the tribes signing the treaties. All Indians do not as a "race" share in those rights. The classification is not "racial", but is determined by membership in an organization that signed a contract with the United States.

The lower federal courts simply determined the meaning of the rights reserved by the Indians when they entered into the treaties with the United States. To strike down treaties negotiated in 1855 under the Fourteenth Amendment which was adopted in 1868 would require a ruling that treaties, though valid when signed, were made unconstitutional retroactively when the Fourteenth Amendment was adopted thirteen years later. Such a ruling would violate the long-accepted rule of construction that subsequent laws do not vitiate Indian treaties unless a clear intent to do so can be shown. Such a ruling would not only be without precedent but would violate any standards of decency and good faith towards the implementation of these treaties so solemnly entered.

B. *Actions of State Agencies and State Attorney General's Office*

State executive department officers have long used their official positions and powers to deny Indians their off-reservation treaty fishing rights. As the Ninth Circuit Court of Appeals noted:

> The record in this case . . . make[s] it crystal clear that it has been recalcitrance of Washington State officials and their vocal non-Indian commercial and sports fishing allies which produced the denial of Indian rights requiring intervention by the district court. This responsibility should neither escape notice nor be forgotten.

United States v. Washington, 520 F.2d 676, 693 (9th Cir. 1975) [concurring opinion of Judge Burns].

During the 1960's the state fish and game departments pursued a vigorous policy of interference with Indian off-reservation fishing. Numerous arrests were made resulting in gear confiscation, fines, and jail sentences. State court rulings either temporarily or permanently enjoined Indians from fishing on the Green, White, Nisqually, and Puyallup rivers. State court decisions denied the existence of one tribe that was federally recognized by the Bureau of Indian Affairs. The state justified its action on the grounds that Indians had no special treaty fishery rights and that in any event state regulation was necessary for conservation. However, during this time Indians were catching well under 10% of the resource, and the state was encouraging the growth of non-Indian commercial fisheries in marine waters—where the fish were intercepted by non-Indian fishermen before they arrived at the Indians' traditional fishing sites.[6]

In the trial court the state had three years to produce evidence to support its claim that regulation of Indian fishing was necessary to promote conservation. Judge Boldt observed that:

> With a single possible exception testified to by a high-

6. For reference, see: American Friends Service Committee, *Uncommon Controversy Fishing Rights of the Nisqually, Puyallup and Muckleshoot Indians* (1970).

ly interested witness . . . and not otherwise substantiated, notwithstanding three years of exhaustive trial preparation, neither Game nor Fisheries has discovered and produced any credible evidence showing any instance, remote or recent, when a definitely identified member of any plaintiff tribe exercised his off reservation treaty rights by any conduct or means detrimental to the perpetuation of any species of anadromous fish.

Unfortunately, insinuations, hearsay, and rumors to the contrary, usually but not always instigated anonymously, have been and still are rampant in Western Washington. Indeed, the near total absence of substantial evidence to support these apparent falsehoods was a considerable surprise to this court.

United States v. Washington, 384 F. Supp. at 338 n.26.

III.

Hostile State Reaction to the Lower Court Decision Has Caused Difficulties in Implementation Which Would Have Been Avoidable if the State Had Assumed a Cooperative Posture

The refusal of the state to abide by the decision in *United States v. Washington* has obstructed implementation of this decision and encouraged the lawlessness that dominates the salmon fishery.

The Washington Supreme Court effectively prevented implementation of federal court orders by ruling in 1977 that the state fisheries department had no statutory authority to allocate harvestable fish for any purpose other than conservation, and specifically could not do so to implement the Indians' treaty rights. The state Department of Fisheries then claimed to be powerless to implement the federal court orders without new state legislation.

The legislature contributed to the state's obstructionism by failing to enact bills to vest the requisite allocation

authority in the Department of Fisheries. *The Seattle Times,* Washington state's largest newspaper, editorialized on March 7, 1977:

> For far too long, the Legislature has tended to shy away from measures to give the Department of Fisheries better tools and greater flexibility for fisheries management . . . an overhaul of present laws is essential not only to improving the climate for possible negotiated settlements of Indian fishing matters, but as a way to head off violence involving non-Indian fishermen in the fishing seasons that lie ahead.

That same editorial noted a voluntary agreement between Oregon, Washington, and Indian tribes fixing a formula for the allocation of Columbia River salmon. The editors applauded that agreement as "the most important development affecting Columbia River fishing since the Indian treaties of 1855," and noted further that:

> The pact could also be regarded as setting an encouraging precedent for negotiated settlements of the prolonged and complex disputes over the Puget Sound fishery. But prospects for negotiating pacts on Indian fishing here, as well as other fishing issues, will remain fairly remote without action by the Legislature . . .

The executive department of the state has also done little to encourage cooperation and communication with treaty tribes since Judge Boldt's decision. An example is the unfortunate advocacy by the present governor of renegotiation of Indian treaties made during this nation's renegotiation of the Panama Treaty. The State Attorney General has openly opposed the lower court ruling, and has testified before the U.S. Civil Rights Commission that Indians have been made "supercitizens" (hearing before the United States Commission on Civil Rights in Seattle, Washington on October 19-20, 1977, Vol. I. p. 14).

An Assistant Attorney General has appeared before many commercial fishing groups and has been publicly quoted in the press assuring non-Indian fishermen that the lower court decision will be "overruled" because it violates their "equal rights" under the constitution.

The *amici* are distressed that the state has clouded the issue of compliance with federal court orders by the "equal protection" argument. This argument is especially inappropriate here and tends to foster racial bigotry in a society which has suffered far loo long from the damaging effects of racism. These actions by state officials, who have sworn to uphold the Constitution of the United States, are highly unprincipled, have contributed to the current level of agitation in the industry, and have encouraged flagrant illegal fishing by non-Indians. The following observations of the United States Court of Appeals for the Ninth Circuit are particularly appropriate:

> The State's extraordinary machinations in resisting the decree have forced the District Court to take over a large share of the management of the state's fishery in order to enforce its decrees. Except for some desegregation cases [citations omitted], the District Court has faced the most concerted official and private efforts to frustrate a decree of a federal court witnessed in this century.

United States v. Washington, 573 F.2d 1123, 1126 (9th Cir. 1978).

State officials and non-Indian commercial fishing groups have decried the "uncertainty" of the law in this area, in spite of definitive rulings of the federal district and Ninth Circuit courts. The clear implication of these assertions is that with "certainty" will come compliance with the law, correction of the current lawlessness in the non-Indian

fishery, and acceptance of a rational management regime including the treaty Indian fishery. The *amici* cannot accept the state's claim that the rulings of the lower court leave any uncertainties. Rather it has been the obstructionism of the state which has led to the current level of agitation and disrespect for the law. This mistaken perception of "uncertaintly" can and should be rectified by a clear ruling of this Court upholding the lower court decisions.

IV.

The Responsibility for Difficulties Imposed on the Non-Indian Fishing Industry Should be Shouldered by the State and Federal Governments Which Caused the Problem, Not by the Indians

The apportionment in the fishery should have been made 75 or 100 years ago when the state first began encroaching on the treaty right. That it has come at this stage of non-Indian fisheries development is certainly inconvenient, and requires adjustments among non-Indian fishery groups, but does not justify a denial to Indians of what is justly theirs. The burden of this adjustment rests with the state and federal governments, which created the problem by failing to recognize and accommodate the legal rights of the Indians from the beginning.[7] Responsibility for current problems should not be foisted onto the politically less

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7. The historical disregard for Indian treaty rights in Washington is especially appalling in light of the federal government's fiduciary responsibility to protect those rights. Extensive case law has recognized a trust responsibility to Indian tribes. *See, e.g. Cherokee Nation v. Georgia,* 30 U.S. (5 Pet.) 1 (1831); *United States v. Kagama, supra, United States v. Sandoval,* 231 U.S. 28, 45-46 (1913); *United States v. Payne,* 264 U.S. 446, 448 (1924); *Choctaw Nation v. United States,* 119 U.S. 1, 27-28 (1886); and *Seminole v. United States,* 316 U.S. 286, 296-97 (1942).

This trust responsibility has most recently been articulated by Congress in section two of the Indian Child Welfare Act of 1978, P.L. 95-608: "Recognizing the special relationship between the United States and Indian

powerful Indian tribes. Adjustments by the non-Indian fishermen may cause hardships for some commercial and sports fishermen. Such hardships can be and are being addressed through federally sponsored buy-back programs and fishery enhancement programs, and such programs should be continued.

V.

Implementation of *United States v. Washington* Will Benefit Both the Indian and Non-Indian Citizens of the State

A. *Implementation of the Decision Forces More Thoughtful Planning in the Overall Management of the Resource*

For many years the salmon fishing industry in the state has been in serious trouble. The growth of the industry has been guided by the frontier principle that salmon are an inexhaustible resource. This policy placed undue faith in hatchery programs which were expected to replace all fish lost to poor habitat control and over-fishing. As early as 1906 the state fish commissioner noted that excessive and unregulated fishing was being permitted. State policy has continued to encourage the growth of the commercial fishing fleet despite clear evidence that the fish stocks were disappearing. Between 1911 and 1914 the average annual catch of salmon was 24,901,000 fish. The average annual

tribes . . . the Federal responsibility to Indian people . . ." and, ". . . that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources."

The federal government has been justly criticized for its apathetic approach towards its legal and moral responsibility to protect Indian resources. In view of the long history of state interference with Indian treaty fishing rights in Washington, the 1970 decision of the United States Department of Justice to file the action below, while appropriate, was long overdue.

catch between 1971 and 1974 was 6,508,000.[8] This drastic decrease occurred despite an increase in the number of fishermen and significantly improved fishing technology.

If Indians had not courageously challenged the practices of the state, the salmon stocks may have continued to decline to a point where very few non-Indians would have enjoyed any success in the industry. As a result of the Indians' court challenges, the public consciousness has been raised, and more citizens are aware of the multidimensional aspects of sound resource management. Certainly continued restriction of Indian fishing will not cure the problems currently facing the industry.

Since the trial court decision, the tribes have taken great strides to enhance their fishery management capabilities. Mere speculation that tribal management might fall short of conservation goals does not justify denial of tribal self-regulation.

Procedures to promote cooperation were established immediately after the district court ruling in 1974. The court obtained the services of a fisheries biologist and eventually created a Fisheries Advisory Board consisting of both state and tribal representatives. This Board has resolved many technical disputes which have arisen during subsequent salmon fishing seasons. This communication is overdue and, given the tribes' interest in and dependence on a healthy resource, should lead to increased respect and concern for one of the state's unique and valuable resources. The process should be noted and encouraged.

8. 38th to 39th *Annual Report—State Department of Fisheries*, 42nd to 45th *Annual Report—State Department of Fisheries*, 1974 State Department of Fisheries *Statistical Report*.

B. *The Decision Enables the Tribes to Develop a Stable Economy to Which They Are Culturally Suited and in Which They Reserve a Property Right*

When the Treaties were signed the tribes had a highly developed fishery on which they were economically dependent. Tribal leaders knew that reserving the right to fish was necessary to their culture and survival. Assaults on this right, along with other forms of political and cultural oppression, have caused widespread poverty and unfortunate social conditions among the Indians in the Pacific Northwest, resulting in high unemployment, shorter life spans, poor health, and low educational achievement. Despite the state's attempts to frustrate it, the trial court decision has resulted in a significant improvement of fishing opportunities to various tribes. The tribes are preparing for a future in all aspects of fishery management—marine biology, fish management technology, law enforcement, and fish processing. This future provides educational goals for tribal members and renews their pride in a livelihood and culture compatible with their history.

The state's economy is enhanced by the growing economic health of tribal communities. Money spent for groceries, goods, and services remains in the state and contributes to the local economy. Increased Indian employment in the fishery reduces poverty and the need for government assistance.

VI.

The Decision Is Consistent With Current Congressional Policy of Indian Self-Determination

Congressional policy of self-determination supports the federal district court decision.[9] The district judge noted

9. *See, e.g.*, Indian Self-Determination Act, 25 U.S.C. § 450 *et seq.* (1975); Indian Civil Rights Act of 1968, 25 U.S.C. § 1301 *et seq.*; Indian Financing Act of 1974, 25 U.S.C. § 1451 *et seq.*

that current congressional "measures . . . make plain the intent and philosophy of Congress to increase rather than diminish or limit the exercise of tribal self-government." *United States v. Washington*, 384 F. Supp. at 340. Tribal management of the Indians' own fishery is an important element of self-determination. More fundamentally, judicial recognition of the right to harvest a specific percentage of fish provides the tribes with a continuing opportunity for economic and cultural survival and is a profound endorsement of the congressional policy of self-determination.

CONCLUSION

In conclusion we urge that this Court resolve, finally and completely, any conceivable uncertainty that might exist about the meaning of the off-reservation fishing rights reserved to Pacific Northwest Tribes in the Stevens Treaties by rendering an opinion affirming the federal district court and the Ninth Circuit Court of Appeals decisions in *United States v. Washington.*

DATED this 24th day of January, 1979.

Respectfully submitted,

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